IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1133 OF 2004
IN
SECOND APPEAL ST.NO.20088 OF 2004

Sadashiv Kanoji Chavan
(since deceased through L.Rs) ...Applicants

vs.

Babaji Arjun Gawade & Ors. ...Respondents

Mr.S.A.Mudbidri for the Applicants
Mr.Rajesh Parab for the Respondents
CORAM: A.S.OKA, J.
DATE : OCTOBER 9,2007.

P.C.:

1. On the prayer made by the learned counsel for the applicants, name of the Respondents No.13 and 15 are permitted to be deleted.

2. The case made out by the applicants is that after the impugned decree was passed by the Appellate Court on 31st March 2000, immediately an application for review was filed by the applicants. It is pointed out that the said application remained pending and was decided on 22nd April 2004. It is submitted that the period for which the review petition was pending will have to be excluded while computing the period of limitation for preferring the Second Appeal. The learned counsel for the respondent Nos.1 to 5 pointed out that as the Review Petition was dismissed, the period of limitation for preferring the Second Appeal start not from date of dismissal of the Review Petition but on the date on which the decree of the Appellate Court was passed. He submitted that the period

for which the review petition was pending cannot be excluded.

3. It is true that the applicants are not entitled to exclude the said period while computing the period of limitation of the Second Appeal. However, in paragraph 7 of the application it is stated that there is no deliberate or willful delay or latches in filing the Appeal. The Applicants were pursuing a remedy of review Petition which was decided on 22nd April 2004.

4. In the present case the fact remains that immediately after the impugned decree was passed by the Appellate Court, a Review Petition was preferred by the applicants and the same has been dismissed on 22nd April 2004. The Appeal along with the delay condonation application was filed on 19th June 2004. As the Review Petition was pending, the Applicants did not prefer the Second Appeal. Therefore, a case is made out for condonation of delay. However, the Respondent Nos.1 to 5 will have to be compensated by ordering the payment of costs.

5. Hence, rule is made absolute in terms of prayer clause (a) subject to the Applicants paying costs of Rs.3,500/- to the Respondent Nos.1 to 5 within a period of six weeks from today. Payment of costs will be a condition precedent. The deposit of amount of costs in this court within stipulated period will be treated as sufficient compliance.

JUDGE